

**CATEGORY III CONTRACT**  
**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**NATIONAL PARK SERVICE**

Haleakalā National Park  
Summit District and other areas  
Guided Vehicle Tour Services

**CONCESSION CONTRACT NO. CC-HALE002-18**

Valley Isle Excursions, Inc.  
466 East Ahul'iu Way, Wailuku, HI 96793  
Valley Isle Excursions

Covering the Period January 1, 2018 through December 31, 2027

## CONCESSION CONTRACT

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This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Pacific West Region, hereinafter referred to as the "Director," and Valley Isle Excursions, Inc., (hereinafter referred to as "Concessioner"), a Corporation, doing business as Valley Isle Excursions, under the authority of 54 U.S.C. §§ 101911 et seq., including 54 U.S.C. §§ 100901 et seq., and other laws that supplement and amend these laws. The Director and the Concessioner agree:

## **SEC. 1. TERM OF CONTRACT**

This Contract will have a term of ten years from January 1, 2018 until its expiration on December 31, 2027.

## **SEC. 2. SERVICES AND OPERATIONS**

### **(a) Required and Authorized Visitor Services**

(1) The Concessioner must provide the following required Visitor Services within the Area:

	<b>Service</b>	<b>Location</b>
i.	Guided Vehicle Tours	Summit District

This includes providing sunrise and daytime tours to the Summit District.

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services during the term of this Contract:

	<b>Service</b>	<b>Location</b>
i.	Guided Vehicle Tours	Kipahulu District

### **(b) Operation, Maintenance and Quality of Operation**

The Concessioner must provide, operate and maintain the Visitor Services in accordance with this Contract in a manner considered satisfactory by the Director, including the nature, type and quality of the Visitor Services. The Concessioner's authority to provide Visitor Services under the terms of this Contract is nonexclusive. The Concessioner's operations and contract compliance will be evaluated on at least an annual basis.

### **(c) Operating Plan**

The Director will establish and revise, as necessary, after consultation with the Concessioner, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan. The initial Operating Plan is attached to this Contract as Exhibit B.

### **(d) Rates**

All rates and charges to the public by the Concessioner for Visitor Services must be reasonable and appropriate and must be approved by the Director.

### **(e) No Capital Improvements**

The Concessioner may not construct any Capital Improvements upon Area lands.

**SEC. 3. CONCESSIONER PERSONNEL**

- (a) The Concessioner must ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public.
- (b) The Concessioner must establish appropriate screening, hiring, training, safety, employment, termination and other policies and procedures.
- (c) The Concessioner must review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and must take such actions as are necessary to correct the situation.
- (d) The Concessioner must maintain, to the greatest extent possible, a drug free work environment.

**SEC. 4. ENVIRONMENTAL**

The Concessioner must utilize appropriate best management practices (practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract) in its provision of Visitor Services and other activities under this Contract.

**SEC. 5. FEES****(a) Franchise Fee**

- (1) The Concessioner must pay a franchise fee to the Director as follows:

*A flat fee per trip into the Area that will be adjusted each year with the Consumer Price Index ("CPI") throughout the term of the contract. "Per trip" is defined as each time a concessioner's commercial vehicle enters into the Area for a tour. CPI is defined as an index of consumer prices used to measure the change in the cost of basic goods and services in comparison with a fixed base period. For this contract, the Service has used the CPI for all urban consumers in Honolulu, HI as reported by the U.S. Bureau of Labor Statistics.*

- (2) For the term of this Contract, the Concessioner will pay to the Director for the privileges granted under this Contract, a franchise fee equal to two hundred and seventy dollars (\$270) per park entrance.

- (3) The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

- (1) The franchise fee is due on a monthly basis at the end of each month and must be paid by the Concessioner in such a manner that the Director will receive payment within fifteen (15) days after the last day of each month that the Concessioner operates.
- (2) All franchise fees shall be deposited electronically by the Concessioner in accordance with all Applicable Laws.
- (3) The Concessioner must pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments will be offset against the following year's fees. In the event of termination or expiration of this Contract, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.



**(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

**SEC. 6. INSURANCE**

The Concessioner must obtain and maintain during the entire term of this Contract at its sole cost and expense, coverage necessary to fulfill the obligations of this Contract. The insurance requirements are set forth in Exhibit D.

**SEC. 7. RECORDS AND REPORTS****(a) Accounting System**

(1) The Concessioner must maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system must be capable of providing the information required by this Contract. The Concessioner's system of accounts classification must be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$500,000 or more, the Concessioner must use the accrual accounting method.

(3) The Concessioner must keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

**(b) Annual Financial Report**

(1) The Concessioner must submit annually as soon as possible but not later than one hundred and twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements must be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Statements on Standards for Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

**(c) Other Reports**

(1) Balance Sheet. If requested by the Director, within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner must submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet must be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

(2) The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under this Contract or otherwise, including, but not limited to, operational information.

## **SEC. 8. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Termination and Suspension**

(1) The Director may temporarily suspend operations under this Contract in whole or in part or terminate this Contract in writing at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit Visitor Services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract.

(3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature will be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 8(a).

### **(b) Requirements in the Event of Suspension, Termination or Expiration**

(1) In the event of suspension or termination of this Contract for any reason or expiration of this Contract, no compensation of any nature will be due the Concessioner, including, but not limited to, compensation for personal property, or for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner must, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury caused by removal of the property. This removal must occur within thirty (30) days (unless the Director in particular circumstances otherwise determines). Personal property not removed from the Area will be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner.

(3) Prior to and upon the expiration or termination of this Contract for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this Contract after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit E to this Contract, "Transition to a New Concessioner." This section and Exhibit E shall survive the expiration or termination of this Contract.

## **SEC. 9. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

This Contract may not be assigned [e.g. sold] or encumbered [e.g. mortgaged] without the approval of the Director in accordance with 36 CFR Part 51 with respect to proposed assignments and encumbrances.

**SEC. 10. GENERAL PROVISIONS – SEE ADDENDUM 1.**

Addendum 1 attached to this Contract is made a part of this Contract.

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this Contract on the dates shown below.

**CONCESSIONER**

By   
Raymond J. Hutaff  
Vice President and Secretary

Valley Isle Excursions, Inc.


DATE: April 24th, 2017

**UNITED STATES OF AMERICA**

By   
Laura E. Joss  
Regional Director, Pacific West Region  
National Park Service

DATE: May 3, 2017

ATTEST:

By   
Name of signer  
Title of signer

DATE: April 24th, 2017

## ADDENDUM 1 GENERAL PROVISIONS

### 1. DEFINITIONS

The following terms used in this Contract will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of Haleakalā National Park.

(c) "Days" means calendar days.

(d) "Director" means the Director of the National Park Service, and his duly authorized representatives.

(e) "Exhibit" means the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.

(f) "Gross Receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

- (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
- (2) Charges for employees' meals, lodgings, and transportation;
- (3) Cash discounts on purchases;
- (4) Cash discounts on sales;
- (5) Returned sales and allowances;
- (6) Interest on money loaned or in bank accounts;
- (7) Income from investments;
- (8) Income from subsidiary companies outside of the Area;
- (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;
- (10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, hunting and fishing license fees, and postage stamps, provided that the amount excluded will not exceed the amount actually due or paid government agencies;
- (11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, must be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones must be included in gross receipts. All revenues received from charges for in-room telephone or computer access must be included in gross receipts.

(g) "Superintendent" means the manager of the Area.

(h) "Visitor Services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by this Contract.

## **2. LEGAL AND REGULATORY COMPLIANCE**

This Contract, operations under it by the Concessioner, and its administration by the Director, are subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. The Concessioner must give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or Contractors, and must promptly correct any violation.

## **3. SERVICES AND OPERATIONS**

(a) All promotional material, regardless of media format (i.e., printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this Contract must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(b) The Concessioner will provide Federal employees reduced rates, in accordance with guidelines established by the Director, when conducting necessary official business. Complimentary or reduced rates and charges may otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

(c) The Director and Comptroller General of the United States, or any of their duly authorized representatives, will have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(d) Subconcession or other third party agreements, including management agreements, for the provision of Visitor Services required and/or authorized under this Contract, whether in consideration of a percentage of revenues or otherwise, are not permitted.

(e) The Concessioner will ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner's activities. Discoveries of any archeological resources by the Concessioner will be promptly reported to the Director.

## **4. ENVIRONMENTAL DATA, REPORTS, NOTIFICATIONS, AND APPROVALS**

### **(a) Inventory of Hazardous Substances and Inventory of Waste Streams**

The Concessioner must submit to the Director, upon request, an inventory of hazardous chemicals used and stored in the Area by the Concessioner. The Concessioner must obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner must also submit to the Director, upon request, an inventory of all waste streams generated by the Concessioner under this Contract.

### **(b) Reports**

The Concessioner must submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner must also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

**(c) Notification of Releases**

The Concessioner must give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

**(d) Notice of Violation**

The Concessioner must give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

**(e) Communication with Regulatory Agencies**

The Concessioner must provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this Contract. The Concessioner must also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner must allow the Director to participate in any such communications. The Concessioner must also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

**(f) Cost Recovery for Concessioner Environmental Activities**

If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and Contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner will be liable for and must pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section precludes the Concessioner from seeking to recover costs from a responsible third party.

**5. FEES****(a) Adjustment of Franchise Fee**

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" will mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.

- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.
- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director will each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel will establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel will consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this section will be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.
- (10) During the pendency of the process described in this section, the Concessioner will continue to make the established franchise fee payments required by this Contract.

## **6. INDEMNIFICATION**

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or Contractors under this Contract. This indemnification will survive the termination or expiration of this Contract.

## **7. NOTICE OF BANKRUPTCY OR INSOLVENCY**

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity.

For purposes of the bankruptcy statutes, NPS considers that this Contract is not a lease but an executory Contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to such bankruptcy or insolvency action.

## **8. ADDITIONAL PROVISIONS**

(a) This Contract contains the sole and entire agreement of the parties, except for survival of the Concessioner's commitments as set forth in its Offeror's Transmittal Letter in response to the solicitation for this Contract. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(b) This Contract does not grant rights or benefits of any nature to any third party.

(c) The invalidity of a specific provision of this Contract will not affect the validity of the remaining provisions of this Contract.

(d) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party will not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract will not be deemed to be a waiver of any preceding breach of any term of the Contract.

(e) No member of, or delegate to, Congress or Resident Commissioner will be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction will not be construed to extend to this Contract if made with a corporation or company for its general benefit.

(f) This Contract is subject to the provisions of 2 C.F.R. Part 1400, as applicable, concerning non-procurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(g) Nothing contained in this Contract shall be construed as binding the Director to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Contract, or to involve the Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

## **9. NATIONAL PARK SERVICE TRADEMARK LICENSE**

### **(a) License Grant**

The unique nature of a National Park Service concession blends commercial enterprise with the treasured historic, cultural, and, natural assets that the Director is responsible for protecting. The Director hereby grants to the Concessioner a royalty-free, non-exclusive, non-transferable license to use the marks as listed in Exhibit F ("Marks"), for use solely to carry out the services described under this Contract in manner that promotes National Park Service goals and values as stated herein. The Concessioner has the right to sub-license Marks in order to carry out services described under this Contract upon written approval of the Director and under same or substantially similar terms as contained herein. Any use of any Mark intended to identify the National Park Service, or one of the Concession Facilities, shall inure to the benefit of the National Park Service. This license shall cease upon termination or expiration of the Contract, or as otherwise determined by the Director or by law. This license does not constitute a compensable interest to the Concessioner.



**(b) Quality Control and Goodwill**

The Concessioner acknowledges that the maintenance of the high quality of the services, materials, products, and merchandise produced, sold or otherwise prepared for public dissemination pursuant to or in order to carry out services required under this Contract, as well as the control by the Director over their nature, quality, and manner of delivery or distribution, are material conditions of this Contract. The Concessioner shall maintain the distinctiveness of the Marks, the image of the National Park Service brand, and the image and high quality of the services, materials, products, and merchandise bearing the Marks licensed herein. Marks may be used and appear together with other marks used in connection with concession-related goods and services but must stand by themselves. The Concessioner shall immediately cease use of a Mark used in association with the services provided under this Contract on request of the National Park Service.

**(c) Rights and Ownership**

The Concessioner acknowledges that the National Park Service is the sole and exclusive owner of all right, title and interest in and to its Marks, including those licensed under this agreement, as well as to all combinations, forms, and derivatives which must be approved by the Director. The Concessioner further acknowledges, represents and warrants that it has not acquired and shall not acquire (whether by operation of law, by this Contract, or otherwise) any right, title, interest or ownership (collectively "Ownership Rights") in or to any National Park Service Marks or any part thereof. Should any Ownership Rights become vested in the Concessioner, the Concessioner agrees to assign, and hereby assigns, all such Ownership Rights to the Director free of consideration. The Concessioner shall immediately provide and execute all documents reasonably requested by the Director to effectuate and record each such assignment. The Concessioner shall not, during the term or at any time thereafter, do anything which, in the Director's sole judgment, could in any way damage the validity and subsistence of the Marks. The Concessioner shall not attack, dispute, or challenge the National Park Service's Ownership Rights in or to the Marks or the validity of this Contract, nor shall the Concessioner assist others in so doing.

**EXHIBIT A****NONDISCRIMINATION****SEC. 1 REQUIREMENTS RELATING TO EMPLOYMENT AND SERVICE TO THE PUBLIC****(a) Employment**

During the performance of this Contract the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) The Concessioner will comply with all provisions of Executive Order 13658- Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, which are incorporated by reference into this Contract as if fully set forth in this Contract. The applicable contract clause is available at <https://federalregister.gov/a/2014-23533>.

(8) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in

whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The Concessioner will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

#### **(b) Construction, Repair, and Similar Contracts**

The preceding provisions A(1) through A(8) governing performance of work under this Contract, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this Contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this Contract, and for that purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

#### **(c) Facilities**

(1) Definitions: As used herein:

- (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (ii) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

- (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disabling condition;
- (ii) discriminating by segregation or other means against any person.

### **SEC. 2 ACCESSIBILITY**

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

**(a) Discrimination Prohibited**

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

**(b) Existing Facilities**

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

**EXHIBIT B**  
**OPERATING PLAN**

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Attachment 1: Service Contract Act of 1965 Labor Standards Clauses

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Exhibit B-1: Parking Areas

**1) Introduction**

This Operating Plan between Valley Isle Excursions (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Haleakalā National Park (hereinafter referred to as the "Area") that are assigned to the Concessioner for the purposes authorized by the Contract.

In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, will prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Area. Any revisions shall not be inconsistent with the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

**2) Management Responsibilities****A) Concessioner**

To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner must designate an on-island general manager who:

- (1) Has the authority and the managerial experience for operating the designated required and authorized services within the Area;
- (2) Must employ a staff with the expertise and training to operate all services authorized under the Contract;
- (3) Has full authority to act as a liaison in all concession administrative and operational matters within the Area;
- (4) Has the responsibility for implementing the policies and directives of the Service; and,
- (5) In the absence of the general manager, the Concessioner must designate an acting general manager.

**B) Service**

The Superintendent of the Area is responsible for all Service operations, including concession operations. The Superintendent carries out the policies and directives of the Service, including concession contract management. Directly, or through designated representatives, the Superintendent reviews, directs, and coordinates Concessioner activities relating to the Area. This includes:

- (1) Evaluation of Concessioner services;
- (2) Review and approval of all changes to services, advertisements, and other items outlined in the operating and maintenance plans; and,
- (3) Delivery of a current Service staff list, as needed, to the Concessioner with all appropriate points of contact.

**3) General Operating Standards and Requirements****A) Schedule of Operation**

- (1) The Concessioner shall operate up to for 360 days per year, closing for at least five commercial free days as determined by the Service. These days are intended to provide opportunities for Kānaka Maoli to conduct cultural/spiritual traditions in the park without any impacts from commercial tours.
- (2) The exact commercial free days will be determined on an annual basis and provided to the Concessioner at least one year in advance.
- (3) At a minimum, the Concessioner will provide sunrise tours at the Summit District and daytime tours at the Summit District.

- (a) Sunrise tours must arrive to their assigned parking spot at least 45 minutes before sunrise.
- (4) **Within 30 days of the contract effective date**, the Concessioner must submit proposed tours, tour descriptions, operating days, and hours of operations. Thereafter, the Concessioner must submit proposed tours, tour descriptions, operating days and hours for all tours to the Service no later than **December 31 for the next year**. The Service will approve the proposed tours each year in writing 45 days prior to implementation.
- (5) The Service will give reasonable notice in writing of any schedule changes it may initiate.

#### **B) Rate Determination and Approval Process**

##### **(1) Rate Determination**

- (a) The Concessioner's rates and charges to the public are to be commensurate with the level of services and facilities provided, and are to be reasonable, justified, and comparable with similar facilities and services provided by the private sector. The Service will determine reasonableness of rates based on the National Park Service Concession Management Rate Administration Guide (February 2017) ("Rate Administration Guide"). A copy is available on the NPS Commercial Services website ([https://concessions.nps.gov/tools\\_others.htm](https://concessions.nps.gov/tools_others.htm)), as it may be amended, supplemented, or superseded throughout the term of this Contract.
- (b) The Service is allowing competitive market forces to be the determining factor for rates and has therefore utilized the Competitive Market Declaration methodology.

##### **(2) Rate Approval Process**

- (a) Under the Competitive Market Declaration methodology, the Concessioner's rates may be adjusted without specific approval of the Superintendent but are subject to review to ensure that they remain reasonable in comparison to similar services offered outside the Park.
- (b) **Rate Posting.** The Concessioner must make rates for goods and services available to visitors. The Concessioner must prominently post all rates for goods and services provided to the visiting public via a website.
- (3) **Rate Compliance.** The competitive market declaration is reviewed annually and the use of this method may be rescinded if the situation changes.
- (4) **Reduced Rates for Federal Government Employees.** Goods and services may not be provided to government employees or their families without charge or at reduced rates that are not available to the general public.

#### **C) Purchasing**

- (1) **Competitive Purchasing.** The Concessioner may purchase products from a facility operated or owned by the Concessioner or a parent company, provided the product is comparable in quality and price.
- (2) **Discounts.** The Concessioner must take advantage of all available trade, cash and quantity discounts and rebates. Depending on the method of rate approval, the Concessioner must pass these savings through to the consumer.
- (3) **Environmentally Friendly Products.** The Concessioner must purchase environmentally friendly products whenever available and feasible. The Concessioner must develop a list of environmentally friendly (i.e., "green") products and acceptable alternatives for use in all of their operations and must provide the list to the Service for review and for information purposes.
- (4) **Prompt Payment.** The Concessioner must promptly pay its financial obligations to contractors, vendors, and utility providers, the Service, guests, employees or others.
- (5) **Local Purchasing.** The Service encourages sourcing and purchasing of Hawai'i products, where feasible.

#### **D) Evaluations**

- (1) **Concessioner Monitoring Program.** The Concessioner must inspect and monitor its services with respect to Applicable Laws, Service policy and standards, authorized rates, life and safety, public health, environmental management and impacts on cultural and natural resources, responsiveness to visitor comments, compliance with the Contract including all of its Exhibits and



other operational performance as appropriate. The Concessioner is responsible for developing and implementing corrective action plans to respond in a timely manner to any operating deficiencies it identifies. Specific inspection and testing requirements are described in later sections of this Operating Plan.

- (2) *Service Concession Review Program.* The Service will evaluate the Concessioner's services to assess and rate Concessioner performance in accordance with the NPS Concession Review Program. The results of the individual program evaluations are used to prepare an Annual Overall Rating Report. These activities may be conducted by Service personnel. The Service may request the assistance of third-party subject matter experts. The findings of such experts may be fully incorporated in Service evaluations. *The Concessioner must provide full access to management, property, documentation, and other resources necessary for the Service to conduct these evaluations. The Concessioner must work with Service officials to prioritize, schedule and correct deficiencies and implement improvement programs resulting from these activities. The Concessioner's performance in addressing deficiencies on schedule and in a timely manner may be a consideration in determining the Concessioner's rating.*
  - (a) Periodic Operational Evaluations. The Service must conduct both announced and unannounced periodic operational evaluations of services to ensure conformance to applicable operational standards. The Concessioner will be contacted at the time of evaluations so that a representative of the Concessioner may accompany the evaluator.
- (3) *Annual Overall Rating (AOR) Report.* The Service determines and generally provides the Concessioner with an Annual Overall Rating Report by **March 31** based on the Service evaluations for the preceding calendar year. The Annual Overall Rating will roll up the following individual reports and include one score and rating for the entire operating year: Administrative Compliance Report, Operational Performance Rating Report, Public Health Program Evaluation Report, Risk Management Program Evaluation Report, and Environmental Management Program Evaluation Report.
  - (a) Administrative Compliance Evaluation and Report. This report and rating considers the Contract compliance criteria, including timely submission of the annual financial report, timely and accurate submission of franchise fees, and timely submission of proof of insurance.
  - (b) Operational Performance Report. This report and rating considers the individual periodic operational evaluations, and weights them if necessary.
  - (c) Public Health Program Evaluation (if applicable). A representative of the Service's Public Health Program will conduct periodic evaluations of the Concessioner's food and beverage operations. These evaluations will be conducted in accordance with Service Public Health Service procedures based upon the U.S. Food Code.
  - (d) Risk Management Program Evaluation. The Service will annually conduct a comprehensive evaluation of the Concessioner's Risk Management Program (RMP). This evaluation will consider performance in complying with NPS risk management standards, implementing life safety and fire safety programs, and operating in accordance with the Concessioner's documented RMP. The results of any life or fire safety inspections conducted by the Service will also be a component of this evaluation and a component of Periodic Operational Evaluations.
  - (e) Environmental Management Program Evaluation. The Service will conduct an annual evaluation of the Concessioner's Environmental Management Program (EMP). The evaluation will consider performance in complying with NPS risk management standards, protecting natural resources, meeting environmental compliance requirements, and operating in accordance with the Concessioner's documented EMP. Performance in addressing Concessioner environmental audit findings will also be a component of this evaluation.
- (4) *Other Audits or Inspections*
  - (a) Concessioner Safety Inspection. The Concessioner must ensure employee compliance with health, fire, and safety code regulations as well as the Service's policies and guidelines.

- (b) Environmental Audits. The Service may conduct environmental audits to evaluate the operations with respect to environmental compliance and environmental Best Management Practices in accordance with the current Service Concession Environmental Audit Program Operating Guide. Performance in closing audit findings is considered in the annual EMP Evaluation.
- (c) Interpretive Program Review. The Service may evaluate the Concessioner's interpretive and informational services to ensure appropriateness, accuracy, quality, and the relationship of interpretive presentations to Area themes in addition to service-specific reviews that occur during periodic evaluations.
- (5) *Visitor Comments*. The Concessioner must make Service-approved comment cards or electronic surveys available to visitors to measure service and quality standards, product mix, pricing, and overall visitor experience. The Concessioner must have an adequate inventory of comment cards available at appropriate locations within its facilities at all times or provide easy access to an electronic survey through QR codes, email, website, etc.
  - (a) The Concessioner must investigate and respond to all visitor complaints regarding its services. The Concessioner must provide copies of visitor comments that allege misconduct by concession or NPS employees, pertain to the safety of visitors or Service employees, or concern the safety of Area resources to the Service upon receipt.
  - (b) The Concessioner must forward to the Superintendent by the 15th day of each month, original comment cards or a copy of surveys filled out online and a summary of all comments and/or complaints received on comment cards or any other form of documentation.
  - (c) The Service will forward to the Concessioner any comments and/or complaints received regarding the Concession services.
  - (d) The Concessioner must investigate and make an initial response to any complaints within 48 hours. The Concessioner must forward to the Superintendent a copy of all responses. The Service will forward to the Concessioner a copy of any Service responses.
- (6) *Environmental Inspections and Evaluations*
  - (a) Concessioner Environmental Self-Inspections. The Concessioner must periodically conduct interior and exterior environmental inspections of all off-site support facilities and vehicle maintenance procedures, in accordance with the Contract.
  - (b) Concessioner Environmental Self-Evaluations. The Concessioner must ensure employee compliance with environmental laws and regulations, as well as Service policies and guidelines.

#### **E) General**

- (1) *Smoking Policy*. Smoking is prohibited within 20 feet of any building entrance, window or ventilation duct within Haleakalā National Park.
- (2) *External Regulatory Agencies*. The Concessioner must submit to the Service any notices of violation, requests for corrective action, or any other type of performance or non-performance notices from external regulatory agencies as soon as possible, but not later than ten days of receipt by the Concessioner. External regulatory agencies are any agencies having authority and/or jurisdiction over any facet of the Concessioner's operations or facilities in the Area. These agencies include, but are not limited to, Hawai'i Department of Transportation, the U.S. Occupational Safety and Health Administration (Hawaii Public Utilities Commission), and the U.S. Department of Labor.
- (3) *Firearms and Weapons*
  - (a) On-duty employees must not possess or use weapons or firearms. The Superintendent, in his or her sole discretion, may grant exceptions to this prohibition upon consideration of a written request from the Concessioner with a thorough explanation of the basis of the request. The Superintendent's response to the Concessioner must be in writing and the Concessioner must have written approval from the Superintendent before implementing any exceptions.

- (4) *Lost and Found.* The Concessioner must provide an effective program (plan) for handling lost and found or unattended property in its Concession vehicles to the Service for review and approval within 90 days of Contract award. The Concessioner must submit any changes to the plan to the Service for review and approval prior to implementation.
- (a) Procedures for the handling of lost and found property must conform to Directors Order (DO) 44, Personal Property Management Information Notice 05-01, and 41 CFR 101-48. These can be found at <http://www.nps.gov/policy/DOrders/RM44.pdf> and <http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2014&go=Go>
- (5) *Vehicles*
- (a) Licensing, Insurance, Maintenance and Registration. The concessioner must ensure that all vehicular equipment used by the Concessioner is properly registered, licensed, insured, and maintained in accordance with Applicable Laws. Proof of required registrations, licenses, insurance, and maintenance compliance must be available to the Service upon request.
- (b) Identification. The Concessioner must identify its vehicles prominently with the company name and logo.
- (6) *Interaction with Wildlife*
- (a) The Service prohibits feeding of wildlife within the Area. The Concessioner must not encourage nor inadvertently facilitate the feeding of wildlife at any facility within the Area by displaying food in such a manner that may imply approval of the feeding of wildlife. The Concessioner must completely control and contain all food supplies and waste materials and containers, within the Concession vehicles, in order to avoid attracting wildlife. The Concessioner is responsible for visitor actions while on tours and must ensure its customers comply with wildlife feeding rules and litter prohibitions.
- (b) The Concessioner must immediately report any unusual wildlife observations.
- (c) Endangered Birds on and near the road. Two endangered bird species can be present on and along the side of the Park's road, the Nene (Hawaiian goose) and the 'Ua'u (Hawaiian petrel). Thus, drivers must drive at or under the speed limit to keep from hitting one of these endangered birds. If a Nene or 'Ua'u is hit by a company or other vehicle or injured in any other way, the Holder and/or employees, shall, upon discovery or awareness, immediately contact Park Dispatch (1-877-428-6911).
- Nene:
    - ♦ The Concessioner shall inform all drivers that *Nene* are frequently on the Park's road and do not readily move when approached by vehicles. If there is a *Nene* on the road, drivers shall stop and allow the *Nene* to move away on its own.
    - ♦ The Concessioner shall especially caution all drivers that *Nene* routinely travel in pairs or family groups suddenly appear from the bushes into the road, and be especially vigilant of this behavior on foggy and/or rainy days.
  - 'Ua'u:
    - ♦ The Concessioner shall inform all drivers 'Ua'u nests occur along the road side from MM 16.5 to the summit.
    - ♦ The 'Ua'u are active at night within the Area, sometimes land on the road, and do not move when approached by vehicles.
    - ♦ No idling Exhaust from vehicles may harm nesting 'Ua'u.
    - ♦ If an 'Ua'u is on the road, drivers should stop, call Park Dispatch directly and await instruction and assistance.
- (7) *Water Conservation.* Guides/drivers shall comply with Park water conservation guidelines. During periods of drought, the NPS shall direct tour groups to use alternative facilities in the Summit area, i.e., public restrooms at the Headquarters Visitor Center.
- (8) *Recycling.* Guides/drivers are encouraged to recycle. Recycling containers for aluminum are available throughout the park.

**F) Human Resources Management****(1) Employee Identification and Appearance**

- (a) At a minimum, the Concessioner must issue all employees an employee photo identification card that includes their name and an expiration date based on the employee's anticipated departure date. The Concessioner must collect the identification cards upon termination of employment.

**(2) Employee List.** The Concessioner must submit to the Superintendent a list of the names, job titles, and contact information for all managers **within 60 days of Contract award**, and quarterly thereafter. The Concessioner must provide a list of after-hours contacts and phone numbers for emergencies. The Concessioner must provide updates when necessary.**(3) Employee Qualifications.** All employees must understand the requirements and procedures of their jobs as well as specific Area regulations and the purposes for these regulations. All information provided by staff to visitors must be accurate. In addition, information presented on tours and by staff at information desks must be complete, appropriate to the audience, and related to Area themes. This basic understanding must include knowledge about the Area's purpose and significance, familiarity with the layout of the Area and key features, working knowledge of how to live and recreate in the Area environment appropriately, and Service regulations.**(4) Employee Hiring Procedures**

- (a) Staffing Requirements. The Concessioner must hire a sufficient number of employees to ensure satisfactory visitor services throughout the season. The Concessioner must meet all applicable requirements of the U.S. Department of Labor.
- (b) Drug-free Environment. The Concessioner must maintain, to the greatest extent possible, a drug-free workplace environment. The Concessioner must conduct educational program(s) for its employees to deter substance and alcohol abuse. If the Concessioner finds evidence of illegal drug use/possession/distribution within the Area they are to immediately contact the Division of Visitor and Resource Protection.
- (c) Background Checks. The Concessioner must establish hiring policies that must include appropriate background reviews of applicants for employment. The Concessioner must make appropriate hiring decisions in consideration of the information obtained. The Concessioner shall make available upon request copies of background checks.
- (d) Within 30 days following the effective date of the Contract, the Concessioner must submit its drug testing, background check, and associated hiring policies for the review of the Superintendent. If the Concessioner amends these policies substantively, it must submit the amendment for the review of the Superintendent.
- (e) Drug-free Awareness and Testing Program. The Concessioner must provide its employees with a statement of its policies regarding drug and alcohol abuse, and conduct educational program(s) for its employees to deter drug and alcohol abuse. The Concessioner must maintain, to the greatest extent possible, a drug-free workplace environment. The Concessioner must conduct educational programs for its employees to deter drug and alcohol abuse.
  - The Concessioner must establish an appropriate employee drug-testing program. Method of, and substances included in the screening must conform to general practices followed within similar businesses.
  - Positive drug tests must result in immediate removal from any safety-sensitive position. Concessioner must notify the Service of termination within 48 hours.
  - Drug and Alcohol Policy. The Concessioner must conduct drug and alcohol testing for safety-sensitive positions, such as a passenger vehicle operator. The Concessioner must follow the Federal Transit Administration's Drug and Alcohol Testing Policy to define safety-sensitive employees used in the Concessioner's transportation operations. Drug and alcohol testing for transit operations and other safety sensitive employees will include but not be limited to pre-employment, random, post-accident, and reasonable

suspicion. The Concessioner must terminate from their positions immediately any drivers and other holders of safety-sensitive positions found working under the influence of alcohol or controlled substances.

- (f) Service Employees. The Concessioner must not employ in any status a Service employee, his/her spouse, or minor children of Service employees without the Superintendent's prior written approval.

(5) *Training*

- (a) Safety. The Concessioner must train its employees according to the training requirements in its Risk Management Plan.

- (b) Job Training and Orientation. The Concessioner must provide appropriate job training to each employee prior to duty assignments and working with the public. The Concessioner must provide mandatory employee orientation for all new employees and inform employees of Service regulations and requirements that affect their employment and activities while working and residing in the Area.

- (c) Route Training. The Concessioner shall require all drivers, to have a minimum of three training tours with experienced drivers prior to soloing in this role.

- (d) Hospitality Training. The Concessioner must provide hospitality training once yearly for employees who have direct visitor contact.

- (e) Environmental Training. The Concessioner must provide environmental yearly training to all employees according to requirements in its Environmental Management Program.

- (f) Orientation to the Area. The Concessioner must provide orientation and training for its employees regarding working in the Area.

- The Concessioner must inform employees of Service regulations and requirements that affect their employment and activities while working within the Area. The Concessioner must orient its employees to the resources of the Area, including potential safety hazards and their mitigation.
- The Concessioner's employee orientation program must be on-going, allowing employees to become familiar with many aspects of the Area beyond orientation or specific job operations. Examples of topics to address include hiking information, including routes and safety; other facilities and services available in addition to those of the Concessioner; geology, flora, and fauna; and history of the Area. The Concessioner may request that Service staff present certain topics of interest.
- *Interpretive Training*. See Section 7 (F)(5) below.

- (g) Employee Handbook. The Concessioner must provide all employees with a copy of the Concessioner's employee handbook, which must specifically identify the policies and regulations of the Concessioner and the Service. The Concessioner must provide a copy of all employee handbooks to the Service for a 60-day period of review and approval prior to distribution to employees to ensure consistency with all Service rules and regulations. When the Concessioner updates its handbook, the Concessioner must forward a copy to the Service.

- (h) Employees shall be encouraged to attend any NPS-sponsored training relating to concession operations in the Park. Employees, especially managers, may attend other NPS training as space permits and determined appropriate by the NPS.

- (i) Worker's Compensation. The Concessioner's managers and human resources staff must attend worker's compensation training to understand how to comply with worker's compensation laws and policies, so as to mitigate work-related accidents.

- (6) *Motor Vehicle Record (MVR)*. The Concessioner must review the current MVR of each applicant for the position of transit vehicle operator and reject any applicant whose driving record contains a conviction for DUI, DWI, or another major traffic offense resulting in a one year or more license suspension.

- (7) *Driver Requirements.* In addition to Service-required standards, drivers also must comply with any additional Hawai'i requirements for the type of vehicle driven or number of passengers carried. Each transportation driver must have a current US DOT Physical Card in his or her possession when operating a vehicle in transportation service.

**G) Service Contract Act of 1965, as Amended**

- (1) The Contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. §351 et seq.) ("Act") and is subject to the labor standards clauses for Federal service contracts exceeding \$2,500 that are attached hereto and incorporated herein in full as Attachment 1 to this Operating Plan and is subject to all other applicable provisions of the Act and regulations of the Secretary of Labor issues thereunder (20 C.F.R. Part 4).
- (a) For the sole and limited purpose of conforming to the terms contained in the labor standards clauses of Attachment 1 to the terms used in the Contract (including the Operating Plan), the term "contractor" shall mean "Concessioner" and the term "contracting officer" shall mean the "Superintendent" of the Area when applying the provisions of Attachment 1 to the Contract.
- (2) For the purposes of complying with the provisions of 29 C.F.R. §4.5 (regarding determined minimum wages and fringe benefits), the applicable wage determination in effect as of the date of execution of the Contract is attached hereto and incorporated herein as Attachment 2 to this Operating Plan.

**4) Risk Management Program**

**A) Risk Management Plan**

The Concessioner must develop, maintain, and fully implement its own Risk Management Program in accordance with Service Risk Management Program Standards for Concessioners located on the NPS Commercial Services website ([https://concessions.nps.gov/tools\\_others.htm](https://concessions.nps.gov/tools_others.htm)). The Concessioner must make an initial submittal and request for acceptance of this plan to the Service within 120 days after the Contract's effective date, and must provide an updated revision annually thereafter by **December 31** of each year for review.

**B) Employee Accident/Injury Analysis**

The Concessioner must provide the Service with an annual summary listing of injury/accident types and employee lost days. The summary may include additional information as required by the Service. The summary must compare the present year to the same data from the previous year. This report is due in the Area's Fee and Commercial Services office by **December 31** each year.

**C) Emergency Response to Hazardous Materials Spills**

- (1) The Concessioner must contact the Division of Visitor and Resource Protection (808) 572-4430 for any spills larger than an incidental spill. An incidental spill is one that does not pose a significant safety or health hazard to employees in the immediate vicinity or to the employee cleaning it up, nor does it have the potential to become an emergency in a short time.
- (2) The Concessioner must provide training and emergency response equipment as appropriate and must maintain equipment in good condition on every vehicle.
- (3) *Petroleum Spill Kit.* All vehicles must carry a petroleum spill kit with adequate absorbent materials.

**D) Emergency Plans**

- (1) *Emergency Action Plan.* As part of its Risk Management Program, the Concessioner must include an "Emergency Action Plan" identifying the steps it will take in the event of an emergency. These must include but not be limited to scenarios in the event of hurricane, fire, medical, and natural disaster or other emergencies, and must be location specific. The Plan must include evacuation procedures for guests and employees, as well as procedures for safeguarding valuables. The Concessioner must have a plan in place for chain of communications in the event of an emergency or accident with the assumption that 911 will be the initial point of contact.

- (2) *Emergency Evacuation Plans.* The Concessioner must develop and maintain written Emergency Evacuation and Fire Prevention Plans in accordance with 29 CFR 1910.38, 1910.39 and the National Fire Prevention Act 101. The Concessioner must train staff on the execution of the plan.
- (3) *Disabled vehicles.* Concessioner must provide a replacement vehicle for disabled vehicles on tours within 90 minutes.

## **5) Protection and Emergency Services**

### **A) General**

The Concessioner must manage its employees in a way that minimizes the potential for conflicts to escalate and limits the need to involve Service law enforcement personnel in minor situations. However, if the situation escalates from minor to major the Concessioner shall contact 911.

### **B) Emergency Medical Care**

- (1) *Emergency Medical Care.* The Concessioner should immediately report medical emergencies by calling 911. The Service has trained first responders that will assist when possible.
- (2) *Reporting Medical Incidents.* The Concessioner must also report all medical incidents to the Haleakalā National Park Fee and Commercial Services Manager at (808) 572-4440 as soon as possible but no later than 24 hours after the incident.
- (3) *AED.* The Concessioner must provide and maintain at least one AED for each tour group in the Park in every company vehicle. The Concessioner must also ensure that at least one Concessioner employee per tour is trained in the proper and safe use of the AED and is onsite at all times.
- (4) *Training.* The Concessioner is encouraged to allow its employees to attend cardio pulmonary resuscitation (CPR), automatic external defibrillator (AED) and first aid courses offered by certified entities.

## **6) Public Relations**

### **A) Required Notices**

The Concessioner must prominently post the following at all Concessioner payment areas:

"This service is operated by (Concessioner's name), a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Prices are approved by the National Park Service. Please address comments to:

Superintendent  
Haleakalā National Park  
PO Box 369  
Makawao, HI 96768"

### **B) Media Inquiries**

The Concessioner must forward all media inquiries concerning operations within the Area to the Public Information Officer (808-572-4450).

### **C) Advertisements and Promotional Material**

#### **(1) *Promotional Material***

- (a) *Approval.* The Concessioner must obtain Service approval, for all promotional material prior to any use including creation, publication, distribution (including web distribution), and broadcast, etc. This shall also apply to any commercial third parties. The Concessioner must contact the Fee and Commercial Services Office greater than 60 days in advance to establish specific time frames for review of new projects or major changes to existing materials. The Superintendent may require the Concessioner to remove from circulation any unapproved promotional material.
- (b) *Changes.* The Concessioner must submit brochure text and layout changes to the Superintendent for review and approval at least 60 days prior to projected need/printing

dates. The Superintendent will respond to minor changes to promotional material text within 30 days after receiving the request from the Concessioner.

(2) *Use of National Park Service Authorized Concessioner Mark (Mark)*

- (a) Guidelines. The Service has an approved Mark it allows concessioners to use to advertise the official relationship between the Service and the Concessioner. The Mark consists of the official NPS Arrowhead and the words "Authorized Concessioner." The Concessioner must comply with the guidelines for use of the Mark as provided on the NPS Commercial services website (address provided above).

(3) *Statements*.

- (a) Authorization. All advertisements must include a statement that the National Park Service and the Department of the Interior authorize the Concessioner to serve the public in Haleakalā National Park.
- (b) Equal Opportunity. Advertisements for employment must state that the company is an equal opportunity employer.

**D) Volunteers in Parks (VIP) Program**

The Concessioner may allow its employees to participate in the Volunteers in Parks (VIP) program if the Service approves.

**7) Specific Operating Standards And Requirements**

The Concessioner must provide all services in a consistent, environmentally sensitive, and high quality manner. Standards provided by current Service Concession Management Guidelines are considered service minimums. The Concessioner must monitor and evaluate its operations to ensure that they meet quality standards. In addition to complying with the following standards and requirements, the Concessioner will comply with the standards and guidelines located on the NPS Commercial Services website ([https://concessions.nps.gov/tools\\_others.htm](https://concessions.nps.gov/tools_others.htm)) (See the NPS Commercial Services website for Guided Land Tour Standards.) Additional Guided Land Tour requirements are outlined in this section. When in conflict, standards and guidelines described in this Operating Plan supersede those identified in the standards on the website.

**A) General Management**

- (1) The Concessioner's general manager functions as the primary strategic business leader of the operation, with responsibility for leading all aspects of the operation, including guest and employee satisfaction, financial performance, and sales and revenue generation.
- (2) *Reservations*. The Concessioner must use a central computerized reservation system capable of accommodating requests for all services for which the Concessioner offers reservations. The Concessioner must accept reservations up to a 366-day forward rolling basis although reservations cannot be made for the five commercial free days. The exact days will be determined on an annual basis and provided to the Concessioner at least one year in advance.
- (a) Deposits, Cancellations, and Refunds. The Concessioner must include the policy in all brochures, websites, and reservation confirmations.
- The Concessioner shall provide to the Service for its approval its proposed deposit, cancellation, and refund policy within 30 days of the start of the Contract and whenever a change is proposed.
  - The Concessioner may require a deposit to hold a reservation and must accept traveler's checks, money order, debit or major credit card for such purpose. The Concessioner may accept personal checks.
  - Confirmed Rates. The Concessioner must honor rates quoted at time of reservation.
- (b) Overbooking. The Concessioner may not overbook trips unless a comparable or superior tour is available to be rebooked. The Concessioner must provide any upgrade given to the overbooked visitor free of charge.
- (c) Third party sales or intermediaries. Third party companies that are selling services (tours, transportation, etc.) for the Concessioner must sell those services at or below the rate that



the Concessioner is charging directly. If the third party is offering additional services, such as travel planning or packaging activities, the third party must charge those fees separately and not include them in the rates for the Concessioner activity. All Concessioner reservation policies shall apply to these third party intermediaries.

(3) *Internet Based Reservations*

- (a) The Concessioner must provide a real time on-line reservations system with accurate, up to-date trip planning information.
- (b) The on-line reservation system must include a Customer Support link for visitors to provide feedback and inquire about reservations.
- (c) The Concessioner must assign a staff member to review website content on an on-going basis. The staff member must meet with the Service prior to the opening of advance reservations to provide updates and ensure accurate information.
- (d) The Concessioner must complete requests by the Service to update any content on the website within 48 hours.

(4) *Credit Cards*

- (a) **Within 90 days of contract effective date**, the Concessioner must develop and present to the Service for review a program that allows for electronic transactions only (i.e. signatures not required) for appropriate transactions. The Concessioner must implement this program upon approval.
- (b) In addition to Service-required payment methods, the Concessioner must also accept debit cards, U.S. currency, money orders, and traveler's checks.

**B) Tour Service**

(1) *Out of Vehicle Activities*

- (a) The Concessioner must ensure that its visitors adhere to all park rules and policies including those specified in the Superintendents Compendium while touring within the Area. This includes picking up all litter and ensuring the visitors remain on designated pathways at all times.
- (b) The Concessioner is not permitted to provide bicycles to guests for riding within Park boundaries.
- (c) No food may be served outside the vehicles. The Service highly discourages consuming food or beverages at the Summit due to invasive pest issues.
- (d) The Concessioner shall not provide any guided tours outside of the designated areas identified in Section 7 F),(6).

(2) *Parking (see Exhibit B-1 for map of parking areas)*

- (a) Summit Area. Drop off and parking at the Summit (Red Hill) is prohibited for all commercial vehicles during sunrise hours. There are no designated commercial stalls at any time. Vehicles with greater than 15 passenger capacity are not permitted.
- (b) Haleakalā Visitor Center Parking Lot. Concessioners with any size vehicle shall park only in designated commercial parking stalls. The Concessioner shall be allowed two designated commercial stalls that each can accommodate two mini buses or three vans. Designated stalls are identified in Exhibit B-1, map A.
- (c) Kalahaku Overlook. Commercial vehicles are permitted at Kalahaku Overlook after sunrise in commercial parking stalls at the first parking lot (before the restroom, closest to the Park Road). This parking is first come, first served.
- (d) Headquarters Visitor Center. Commercial vehicles with a passenger capacity of 15 or less shall park in designated stalls within the visitor parking lot. Vehicles with a passenger capacity of greater than 15 shall park in the commercial bus zone located on either side of the main road in front of the visitor center. At no time shall vehicles park facing opposing traffic.
- (e) Hosmer Grove. Commercial vehicles are not authorized to use this area.

- (f) Kīpahulu Visitor Center. All commercial vehicles will be parked either in the designated commercial parking areas or in the overflow parking area. Commercial vehicles are not permitted to park in general parking areas. At no time are any commercial vehicles allowed to drop off passengers along the road or at bridges in the `Ohe`o Gulch area of Kīpahulu.
- (3) *Off-loading Passengers*. Guides and drivers will be responsible for controlling passengers at those places where the vehicle stops and off-loads. Guides and drivers shall ensure that clients do not obstruct vehicular or pedestrian traffic. This includes keeping clients from walking into the roadway and obstructing traffic, from walking into areas posted as sensitive where resource destruction may result, and from walking beyond fenced areas or delineated walkways. Loading and unloading of passengers in roadways, handicapped parking stalls, within traffic patterns, and where marked "no stopping" is prohibited.
- (4) *Idling*. Idling is not authorized for any amount of time. The driver must turn off the engine once the vehicle is parked and should not turn it on again until preparing to leave the parking lot.

### C) Driver Training

- (1) *Training Program*. The Concessioner must develop a detailed, Service-approved driver-training program that includes operational guidelines and performance standards. The Concessioner must provide a summary of the training program to the Service for review no later than **December 31** of each year.
- (2) *Behind-the-Wheel Training*. New drivers must drive their assigned routes a minimum of three (3) times before taking passengers aboard, using similarly configured equipment (forward-control versus conventional) as used during their passenger runs.
- (3) *Driver's Manual*. The Concessioner must develop a Driver's Manual and provide each driver with a copy. The Concessioner must update the manual regularly. The Concessioner must provide an updated copy of the manual to the Service annually by **December 31**.
- (4) *Driver Safety Meetings*. The Concessioner must conduct monthly driver safety meetings and provide the Service with the notice of such meetings at least one week in advance.
- (5) *Training Instructor*. All operator training must be conducted by an instructor who has the following minimum qualifications: a) A Commercial Driver's License with the appropriate passenger endorsements; b) A minimum of three (3) years of experience transporting passengers on the section of park road they are instructing.
- (6) *CPR and First Aid Training*. Drivers must have current certification to provide cardiopulmonary resuscitation (CPR), AED use and have current certification in at least Standard First Aid level.

### D) Vehicle Requirements

- (1) Vehicles that seat more than 25 passengers are not permitted within the Park.
- (2) *Equipment Requirements*
  - (a) The Concessioner must comply with Americans with Disabilities Act (ADA) regulations.
  - (b) Visitors with Special Access Needs. The Concessioner must immediately communicate to the Service any difficulties experienced by physically challenged individuals relevant to transportation equipment.
  - (c) Two-way Radio. The Concessioner must equip all buses and dispatchers with the means for two-way radio communication. The Concessioner must insure that supervisory staff is available to communicate with drivers as necessary.
- (3) *Inspection*. The Concessioner must inspect each transportation vehicle daily for safety and functionality, when in regular use, by the operator and by maintenance personnel as required by the Federal Motor Carrier Safety Regulations. Such inspections will include, but not be limited to: brakes, steering, tires, doors, interiors (loose seats, loose/broken stanchions, flooring), lights, safety equipment (fire extinguisher, flares or triangle), wheelchair lifts and associated devices, and dents, scrapes, and other body damage considered a hazard to passengers.
- (4) *Record*. The Concessioner must retain records of each inspection and provide them to the Service upon request.

- (5) *Defects.* The Concessioner will correct all found safety defects before the vehicle resumes Transit service.

**E) Transportation Fleet**

- (1) *Maintenance.* The Concessioner is responsible for the maintenance of all vehicles in strict conformance with all federal and state laws, requirements, and manufacturers' specifications.
- (2) *Preventive Maintenance.* The Concessioner must implement a preventive maintenance program that will identify and correct deficiencies in a timely manner with the intention of providing the safest and most dependable service possible.
- (3) *Safety Inspections and Quality Control*
  - (a) The Concessioner must implement and conduct a safety inspection and quality control program for all of its transportation and support vehicles using Best Management Practices (BMP) of the transportation industry.
  - (b) The Concessioner must ensure all vehicles receive an annual Department of Transportation (DOT) inspection.
- (4) *Vehicle Replacement Standards*
  - (a) The maximum age for vehicles providing services under this Contract is 10 years or 200,000 miles for vans and 15 years or 300,000 miles for mini-buses (whichever comes first).
  - (b) A vehicle is considered one year old when it has completed its first full or partial year of use. Concessioner must provide an annual Fleet Report, due **December 31**, with a list of the vehicles in the fleet for that respective year, their current age, and their scheduled replacement year/season.
- (5) *Vehicle Maintenance Recording System.* The Concessioner must maintain a current, computerized, industry-standard fleet management program for all vehicles. Information must include:
  - (a) Vehicle make, model and year
  - (b) Vehicle Serial number
  - (c) Vehicle license number
  - (d) Vehicle mileage
  - (e) Preventative maintenance reports
  - (f) Reports of unscheduled mechanical inspections or attention, including, but not limited to daily vehicle inspection reports. Such reports must include mechanic diagnosis and remedial action taken and/or planned.
  - (g) Components/parts replacement
  - (h) Vehicle failure, to include road call information.
- (6) *Bus Cleaning.* All vehicles utilized for visitor transportation services at Haleakalā National Park must be cleaned, including:
  - (a) Washing and scrubbing of the full exterior, wheels, and fuel-fill area
  - (b) Removal of oil or other excessive residue appearing on the rear of the vehicle
  - (c) Cleaning of all windows, interior and exterior
  - (d) Dusting or vacuuming of all seats, dashboards, stanchions, and exposed surfaces
  - (e) Sweeping, vacuuming and/or scrubbing of all floors including the removal of gum, grease, oil, etc.,
- (7) *PUC Numbers.* All commercial vehicles that transport 7 or less passengers may display PUC number on the front and rear bumper; all larger vehicles must display PUC number on the side. Companies that use rental vehicles must ensure that their driver carries a copy of their PUC authorization.

**F) Interpretive Services**

- (1) Interpretive services shall be defined as providing orientation, information, and inspiration so that visitors will have more enjoyable, meaningful, and complete experiences.
  - (a) The Concessioner shall ensure that any interpretive messaging provided to its visitors shall incorporate the interpretive themes as outlined in the Haleakala National Park long-range interpretive plan. The Service shall review and approve all interpretive products and services provided to visitors. The Service may provide to the Concessioner interpretive materials and/or training to support this effort.
- (2) The Concessioner must create and provide to the Service a Comprehensive Interpretive Plan that articulates key aspects of its interpretive program, including management (visions, goals, objectives), visitor experience goals, themes, standards for drivers, summary of current programming, drafts of interpretive materials for visitors, summary of training plan for the coming year, and plans for each program offered. The Concessioner must submit updates or revisions to the Comprehensive Interpretive Plan to the Service no later than **December 31** of each year for review and approval.
- (3) *Program Content and Delivery*
  - (a) Interpretive Program Content. The content and delivery of programmatic information provided by drivers and interpreters must:
    - Directly relate to Area interpretive themes, including Hawaiian cultural significance of HALE and Hawaiian history.
    - Be accurate and relevant to the Area experience and experience of diverse audiences.
    - Link to the physical location where the interpretation occurs to provide an immersive experience for visitors.
    - Provide an introduction and conclusion that serves the theme of the program.
    - Include an explanation of the HALE cultural brochure.
    - Be available in English and non-English languages to meet visitor needs.
  - (b) Program Delivery. Drivers and interpreters must deliver information in a manner that:
    - Is age appropriate, which includes addressing the learning needs of children.
    - Is interactive and engages visitors in a dialogue when possible.
    - Demonstrates use of proper grammar, clear enunciation (including proper use and pronunciation of Hawaiian words), and employment of appropriate silences.
    - All tours will have a guide to guest ratio of no more than 1:12.
- (4) *Enhanced Interpretive Offerings*. The Concessioner must make available to every tour passenger an interpretive guide booklet approved by the Service. Booklet must be available Spanish, French, German, Italian, Russian, Portuguese, Mandarin Chinese, Japanese, Korean, and Hindi. languages. Concessioner must provide a downloadable Smartphone application which includes interpretive tour content in languages as described in in this section.
- (5) *Interpretive Service Certifications*. All tour guides must be currently certified as interpretive guides through the National Association of Interpretation (NAI).
- (6) *Interpretive Training Program*. The Concessioner must develop a Service-approved interpretive training plan. Training must include;
  - (a) Annual interpretive skills training,
  - (b) Continuing interpretive skills development for returning staff,
  - (c) Opportunities for training about Area resources, and
  - (d) Program preparation time and customer service training.Training plans must also address non-traditional interpretation positions. A summary/outline of the training program and performance standards must be included in the Concessioner's Comprehensive Interpretive Plan.

- (7) *Interpretive Requirements Specific to Off-Bus Interpretation.* The Concessioner may provide guided off-bus interpretive experiences at the following locations: Haleakala Visitor Center Parking Lot and Overlook, White Hill (Pā Ka-Oao), Kalahaku Parking Lot and Overlook, Kuloa trail at Kīpahulu, to augment approved tours. Off-bus programs must be based on any of the Interpretive Themes of the Area, and relevant to the tour experience and be included in the Interpretive Training Plan. The Concessioner must conduct their off bus activities in a manner that protects the site's natural and cultural resources. The Service must pre-approve any on or off bus tours.

## **8) Reporting Requirements**

### **A) Concessioner Operational Reporting**

The Concessioner must provide report data electronically in Microsoft Office Word or Excel (or compatible alternative). Upon request, the Concessioner must provide all supporting documentation for all operational reports to the Service. The Service requires the following reports in order to monitor Concessioner activities, understand visitor use and trends. The Service may also request other information as it requires. The Concessioner must submit the following reports in addition to those set out in Section 7 of the Contract. The Concessioner must provide the Service supporting documentation for all operational reports upon request. Reporting requirements may change or be modified over the course of the contract based on business requirements or operational changes as might occur. The concessioner will be compliant with all changes to reporting requirements.

- (1) *Management Listing.* Within 30 days after Contract execution, the Concessioner must provide the Service with a list of its key management and supervisory personnel, with office and emergency phone numbers and email addresses for each. The Concessioner must update this list as it changes.
- (2) *Incident Reports.* The Concessioner must provide the following information to the Fee and Commercial Services Specialist office within 24 hours.
  - (a) Any fatalities or visitor-related incidents that could result in a tort claim to the United States or the Concessioner.
  - (b) Any motor vehicle accident resulting in property damage, personal injury, or death.
  - (c) Any other incident resulting in personal injury (requiring more than minor first aid treatment) or property damage exceeding \$300.
  - (d) All suspected or known criminal violations.
  - (e) Other incidents that may adversely affect Area resources (e.g., fires, hazardous material spills) or violate state and federal law.
  - (f) Any incidents of resources (natural or cultural) damage.
- (3) *Human Illness Reporting.* Information on all human illnesses, whether employees or guests, is to be promptly reported to the Service's Communication Center and the Fee and Commercial Services Management Office. A suspected outbreak of human illness is two or more persons with common symptoms. The Public Health Service Sanitarian will evaluate this information, along with other information received, to help identify outbreaks of illness associated with contaminated water or food sources, or caused by other adverse environmental conditions. The Concessioner must include a summary of all incidents occurring during the month in the consolidated month-end report.
- (4) *Energy Audits.* Concessioner must provide monthly energy consumption reports showing consumption tracking related to its Area tour operations by the **15<sup>th</sup> day of each following month.**

### **B) Operational Reports by Use**

- (1) *Visitor Use and Staffing Reports.* The Concessioner must maintain a management information system documenting visitor use patterns. The Service may include Concessioner visitor use information provided in documents made available to the public.

- (a) The Concessioner must provide a monthly operational performance report to the Service by the **5th day of each following month**, and an annual summary report prior to **March 31** of the following year. The Concessioner must present the data electronically in a concise Excel spreadsheet (or compatible alternative). The report must include operational statistics and financial information for each activity noted below.

(b) Transportation

- Number of vehicles entering the Park each day by vehicle type, time of day, and brief tour description
- Number of visitors in each vehicle
- Reservations Report providing the following information:
  - ◆ Number of reservations placed
  - ◆ Number of reservations denied and reason for denial
  - ◆ Number of reservations by source (internet, phone, walk-ins, Etc.)
  - ◆ Number of reservations already scheduled for the month ahead

(c) Staffing

- Number of permanent employees on staff at end of month.

(2) Maintenance Logs

- (a) Concessioner must provide maintenance logs detailing service dates, services performed, and vehicle mileage.

**C) Concessioner Financial Reporting**

In addition to the annual financial report (AFR) required in the Contract, the Concessioner must provide the following financial reports:

- (1) *Franchise Fee Payments.* The Concessioner must make payments due to the Service through electronic funds transfers via the U.S. Treasury Pre-Authorized Debit (PAD), or equivalent system. The Concessioner must submit a Monthly Financial Report electronically, in the form prescribed by the Service to the Superintendent, no later than the 15th day of each month, for the previous month (or on the next regular business day if the 15th falls on a weekend or on a federal holiday).
  - (a) Franchise fees will be calculated on a per trip basis.
- (2) *Entrance Fee Payments.* The Concessioner shall ensure that each vehicle entering the park submits an authorized voucher. On a monthly basis, the Service will provide a statement indicating the number of vouchers by type being processed for payment. The Concessioner will have five business days to review the statement and notify the Service of any disputes. After five business days, the Service shall collect payment via electronic funds transfers of the U.S. Treasury Pre-Authorized Debit (PAD), or equivalent system. Entrance fees are separate from franchise fees.
- (3) *Annual Operating Forecast.* An operating forecast including detailed utilization and revenue projections for the year, due 60 days prior to the end of each contract year. This forecast shall than be updated quarterly providing a comparison of actual business activity to forecast.

**D) Summary of Initial and Recurring Due Dates**

The following summarizes the preceding reporting requirement and details other reports, plans, payments, and inspections that will be the responsibility of the Concessioner.

Title	Schedule	Due Date	Reference
<b>Initial Requirements</b>			
Environmental Management Program	Initial	Within sixty days of the effective date of the Contract	Contract, Sec. 4(b)
Balance Sheet	Initial	Within ninety (90) days of the execution of the Contract	Contract, Sec. 7(c)(1)

Title	Schedule	Due Date	Reference
Management Listing	Initial	Within 30 days after Contract execution and when significant changes occur	Operating Plan, Sec. 8(A)(1)
Risk Management Plan	Initial / Annual	Within 120 days after the Contract's effective date; updates due by December 31 of each year	Operating Plan, Sec. 4(A)
Drug Testing Policy	Initial	30 days following the effective date of the Contract.	Operating Plan Sec. 3(F)(4)(d)
Lost and Found Plan	Initial	90 days following the effective date of the Contract.	Operating Plan Sec. 3(E)(7)
Cancellation and Refund Policy	Initial	30 days following the effective date of the Contract.	Operating Plan Sec. 3(E)(4)(c)
Electronic Transaction Program	Initial	90 days following the effective date of the Contract.	Operating Plan Sec. 3(E)(6)(a)
Employee List	Initial and Quarterly	60 days following the effective date of the Contract and Quarterly thereafter.	Operating Plan Sec. 3(F)(2)
<b>Annual Requirements</b>			
Annual Financial Report	Annually	Not later than 90 days after the last day of the Concessioner's fiscal year	Contract, Sec. 7(b)(1)
Employee Accident/Injury Analysis	Annually	By December 31	Operating Plan, Sec. 4(B)
Schedule of Operations	Annually	No later than December 31 for the next season	Operating Plan, Sec. 3(A)(4)
Driver Training Program and Driver's Manual	Annually	By December 31	Operating Plan, Sec. 7(C)(1), (3)
Employee Handbook	Annually	60 days prior to distribution to employees and when updates are made	Operating Plan, Sec. 3(F)(5)(g)
Annual Overall Rating	Annually	By March 31	Operating Plan, Sec. 3(D)(4)
Fleet Report	Annually	By December 31	Operating Plan, Sec. 7(E)(4)(b)
Certificates of Insurance	Annually	At the time insurance is first purchased and annually thereafter	Contract, Sec. 6
Operational Reports	Annually/ Monthly	By March 31 of each year and by the 5th day of the following month	Operating Plan, Sec. 8(B)
Comprehensive Interpretive Plan	Annually	By December 31	Operating Plan, Sec. 7(F)(2)
<b>Monthly Requirements</b>			

Title	Schedule	Due Date	Reference
Franchise Fee	Monthly	By the 15th day after the last day of each month of operation	Contract, Sec. 5(b)
Visitor Comments	Monthly	Within 15 days after the end of each month	Operating Plan, Sec. 3(D)(6)(b)
Energy Consumption Report	Monthly	Within 15 days after the end of each month	Operating Plan, Sec. 8(A)(4)
<b>Other Requirements</b>			
Promotional Material	As Necessary	At least 60 days prior to projected need	Operating Plan, Sec. 6(C)(1)(b)

Note: Per the Contract, the Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the Contract or otherwise, including, but not limited to, operational information.

Effective January 1, 2018



## ATTACHMENT 1: LABOR STANDARDS CLAUSES FOR FEDERAL SERVICE CONTRACTS EXCEEDING \$2,500

(a) Service Contract Act of 1965, as amended: This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor

shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in subpart D of 29 CFR part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of §4.1b(b) of 29 CFR part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in §4.10 of 29 CFR part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in §4.11 of 29 CFR part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or

revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor:

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to §4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term contractor as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term Government prime contractor.

(k)(1) As used in these clauses, the term service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term service employee includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class    Monetary wage-fringe benefits

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§4.173 of Regulations, 29 CFR part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain

anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in parts 525 and 528 of title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) Where an employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips, the amount of tips received by the employee may be credited by the employer

against the minimum wage required by Section 2(a)(1) or 2(b)(1) of the Act to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Attachment 2 follows

WD 15-5739 (Rev.-2) was first posted on [www.wdol.gov](http://www.wdol.gov) on 03/28/2017

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REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor  
U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON D.C. 20210

Daniel W. Simms Director	Division of Wage Determinations	Wage Determination No.: 2015-5739 Revision No.: 2 Date Of Revision: 03/17/2017
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Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

State: Hawaii

Area: Hawaii Counties of Kalawao, Maui  
OCCUPATION NOTE:

STEVEDORING AND LONGSHOREMEN: Wage rates and fringe benefits can be found on Wage Determination 2000-0085

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		14.20
01012 - Accounting Clerk II		15.93
01013 - Accounting Clerk III		17.58
01020 - Administrative Assistant		26.48
01035 - Court Reporter		18.59
01041 - Customer Service Representative I		15.24
01042 - Customer Service Representative II		17.12
01043 - Customer Service Representative III		18.68
01051 - Data Entry Operator I		13.16
01052 - Data Entry Operator II		14.36
01060 - Dispatcher, Motor Vehicle		17.16
01070 - Document Preparation Clerk		13.79



01090 - Duplicating Machine Operator	13.79
01111 - General Clerk I	12.72
01112 - General Clerk II	13.87
01113 - General Clerk III	15.58
01120 - Housing Referral Assistant	23.77
01141 - Messenger Courier	12.47
01191 - Order Clerk I	13.18
01192 - Order Clerk II	14.38
01261 - Personnel Assistant (Employment) I	16.40
01262 - Personnel Assistant (Employment) II	18.35
01263 - Personnel Assistant (Employment) III	20.45
01270 - Production Control Clerk	20.75
01290 - Rental Clerk	15.79
01300 - Scheduler, Maintenance	19.05
01311 - Secretary I	19.05
01312 - Secretary II	21.31
01313 - Secretary III	23.77
01320 - Service Order Dispatcher	15.34
01410 - Supply Technician	26.48
01420 - Survey Worker	17.10
01460 - Switchboard Operator/Receptionist	15.86
01531 - Travel Clerk I	14.78
01532 - Travel Clerk II	15.97
01533 - Travel Clerk III	17.12
01611 - Word Processor I	14.36
01612 - Word Processor II	16.11
01613 - Word Processor III	18.03
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	24.41
05010 - Automotive Electrician	22.43
05040 - Automotive Glass Installer	22.00
05070 - Automotive Worker	22.00
05110 - Mobile Equipment Servicer	18.99
05130 - Motor Equipment Metal Mechanic	24.41
05160 - Motor Equipment Metal Worker	22.00
05190 - Motor Vehicle Mechanic	25.65
05220 - Motor Vehicle Mechanic Helper	17.39
05250 - Motor Vehicle Upholstery Worker	20.80
05280 - Motor Vehicle Wrecker	22.00
05310 - Painter, Automotive	23.19
05340 - Radiator Repair Specialist	22.00
05370 - Tire Repairer	13.78
05400 - Transmission Repair Specialist	24.37
07000 - Food Preparation And Service Occupations	
07010 - Baker	16.36
07041 - Cook I	14.49
07042 - Cook II	16.82
07070 - Dishwasher	12.05
07130 - Food Service Worker	12.25

07210 - Meat Cutter	19.11
07260 - Waiter/Waitress	12.01
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	19.15
09040 - Furniture Handler	12.88
09080 - Furniture Refinisher	21.07
09090 - Furniture Refinisher Helper	15.61
09110 - Furniture Repairer, Minor	18.29
09130 - Upholsterer	19.15
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	11.98
11060 - Elevator Operator	14.18
11090 - Gardener	18.04
11122 - Housekeeping Aide	14.19
11150 - Janitor	14.19
11210 - Laborer, Grounds Maintenance	14.91
11240 - Maid or Houseman	15.94
11260 - Pruner	13.34
11270 - Tractor Operator	18.07
11330 - Trail Maintenance Worker	14.91
11360 - Window Cleaner	15.85
12000 - Health Occupations	
12010 - Ambulance Driver	22.19
12011 - Breath Alcohol Technician	20.70
12012 - Certified Occupational Therapist Assistant	21.64
12015 - Certified Physical Therapist Assistant	20.25
12020 - Dental Assistant	16.28
12025 - Dental Hygienist	33.37
12030 - EKG Technician	28.62
12035 - Electroneurodiagnostic Technologist	28.62
12040 - Emergency Medical Technician	22.19
12071 - Licensed Practical Nurse I	18.51
12072 - Licensed Practical Nurse II	20.70
12073 - Licensed Practical Nurse III	23.09
12100 - Medical Assistant	16.11
12130 - Medical Laboratory Technician	19.74
12160 - Medical Record Clerk	17.82
12190 - Medical Record Technician	19.93
12195 - Medical Transcriptionist	19.74
12210 - Nuclear Medicine Technologist	34.89
12221 - Nursing Assistant I	11.39
12222 - Nursing Assistant II	12.81
12223 - Nursing Assistant III	13.98
12224 - Nursing Assistant IV	15.69
12235 - Optical Dispenser	20.03
12236 - Optical Technician	16.40
12250 - Pharmacy Technician	17.19
12280 - Phlebotomist	15.69
12305 - Radiologic Technologist	31.03

12311 - Registered Nurse I	29.29
12312 - Registered Nurse II	35.82
12313 - Registered Nurse II, Specialist	35.82
12314 - Registered Nurse III	43.34
12315 - Registered Nurse III, Anesthetist	43.34
12316 - Registered Nurse IV	51.94
12317 - Scheduler (Drug and Alcohol Testing)	25.66
12320 - Substance Abuse Treatment Counselor	21.15
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	19.61
13012 - Exhibits Specialist II	23.80
13013 - Exhibits Specialist III	29.12
13041 - Illustrator I	20.71
13042 - Illustrator II	25.67
13043 - Illustrator III	31.40
13047 - Librarian	28.71
13050 - Library Aide/Clerk	15.29
13054 - Library Information Technology Systems Administrator	21.89
13058 - Library Technician	19.10
13061 - Media Specialist I	17.18
13062 - Media Specialist II	19.22
13063 - Media Specialist III	21.42
13071 - Photographer I	15.40
13072 - Photographer II	18.19
13073 - Photographer III	21.57
13074 - Photographer IV	26.39
13075 - Photographer V	31.89
13090 - Technical Order Library Clerk	15.82
13110 - Video Teleconference Technician	20.78
14000 - Information Technology Occupations	
14041 - Computer Operator I	17.54
14042 - Computer Operator II	19.62
14043 - Computer Operator III	22.80
14044 - Computer Operator IV	24.81
14045 - Computer Operator V	27.45
14071 - Computer Programmer I	(see 1)
14072 - Computer Programmer II	(see 1)
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	17.54
14160 - Personal Computer Support Technician	24.81
14170 - System Support Specialist	21.70
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	30.83
15020 - Aircrew Training Devices Instructor (Rated)	37.30

15030 - Air Crew Training Devices Instructor (Pilot)	43.09
15050 - Computer Based Training Specialist / Instructor	30.83
15060 - Educational Technologist	28.38
15070 - Flight Instructor (Pilot)	43.09
15080 - Graphic Artist	22.97
15085 - Maintenance Test Pilot, Fixed, Jet/Prop	36.57
15086 - Maintenance Test Pilot, Rotary Wing	36.57
15088 - Non-Maintenance Test/Co-Pilot	36.57
15090 - Technical Instructor	19.66
15095 - Technical Instructor/Course Developer	24.05
15110 - Test Proctor	19.47
15120 - Tutor	19.47
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	12.12
16030 - Counter Attendant	12.12
16040 - Dry Cleaner	15.01
16070 - Finisher, Flatwork, Machine	12.12
16090 - Presser, Hand	12.12
16110 - Presser, Machine, Drycleaning	12.12
16130 - Presser, Machine, Shirts	12.12
16160 - Presser, Machine, Wearing Apparel, Laundry	12.12
16190 - Sewing Machine Operator	15.98
16220 - Tailor	16.83
16250 - Washer, Machine	13.10
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	25.48
19040 - Tool And Die Maker	32.02
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	21.93
21030 - Material Coordinator	24.03
21040 - Material Expediter	24.03
21050 - Material Handling Laborer	16.89
21071 - Order Filler	14.86
21080 - Production Line Worker (Food Processing)	21.93
21110 - Shipping Packer	16.16
21130 - Shipping/Receiving Clerk	16.16
21140 - Store Worker I	13.93
21150 - Stock Clerk	19.55
21210 - Tools And Parts Attendant	21.93
21410 - Warehouse Specialist	21.93
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	28.85
23019 - Aircraft Logs and Records Technician	22.63
23021 - Aircraft Mechanic I	27.14
23022 - Aircraft Mechanic II	28.85
23023 - Aircraft Mechanic III	30.55
23040 - Aircraft Mechanic Helper	19.51
23050 - Aircraft, Painter	25.48
23060 - Aircraft Servicer	22.63

23070 - Aircraft Survival Flight Equipment Technician	25.48
23080 - Aircraft Worker	24.16
23091 - Aircrew Life Support Equipment (ALSE) Mechanic	24.16
I	
23092 - Aircrew Life Support Equipment (ALSE) Mechanic	27.14
II	
23110 - Appliance Mechanic	24.13
23120 - Bicycle Repairer	15.16
23125 - Cable Splicer	28.39
23130 - Carpenter, Maintenance	30.99
23140 - Carpet Layer	24.86
23160 - Electrician, Maintenance	28.25
23181 - Electronics Technician Maintenance I	26.83
23182 - Electronics Technician Maintenance II	28.69
23183 - Electronics Technician Maintenance III	30.56
23260 - Fabric Worker	22.18
23290 - Fire Alarm System Mechanic	25.81
23310 - Fire Extinguisher Repairer	20.53
23311 - Fuel Distribution System Mechanic	27.68
23312 - Fuel Distribution System Operator	21.58
23370 - General Maintenance Worker	20.30
23380 - Ground Support Equipment Mechanic	27.14
23381 - Ground Support Equipment Servicer	22.63
23382 - Ground Support Equipment Worker	24.16
23391 - Gunsmith I	20.53
23392 - Gunsmith II	23.83
23393 - Gunsmith III	27.14
23410 - Heating, Ventilation And Air-Conditioning Mechanic	24.07
23411 - Heating, Ventilation And Air Contdtioning Mechanic (Research Facility)	25.52
23430 - Heavy Equipment Mechanic	28.29
23440 - Heavy Equipment Operator	34.11
23460 - Instrument Mechanic	29.96
23465 - Laboratory/Shelter Mechanic	25.48
23470 - Laborer	16.49
23510 - Locksmith	25.48
23530 - Machinery Maintenance Mechanic	27.14
23550 - Machinist, Maintenance	27.04
23580 - Maintenance Trades Helper	16.42
23591 - Metrology Technician I	29.96
23592 - Metrology Technician II	31.76
23593 - Metrology Technician III	33.49
23640 - Millwright	27.14
23710 - Office Appliance Repairer	23.72
23760 - Painter, Maintenance	27.82
23790 - Pipefitter, Maintenance	29.24
23810 - Plumber, Maintenance	27.46
23820 - Pneudraulic Systems Mechanic	27.14

23850 - Rigger	27.14
23870 - Scale Mechanic	23.83
23890 - Sheet-Metal Worker, Maintenance	31.31
23910 - Small Engine Mechanic	22.72
23931 - Telecommunications Mechanic I	30.27
23932 - Telecommunications Mechanic II	30.86
23950 - Telephone Lineman	26.60
23960 - Welder, Combination, Maintenance	25.04
23965 - Well Driller	27.14
23970 - Woodcraft Worker	27.14
23980 - Woodworker	19.44
24000 - Personal Needs Occupations	
24550 - Case Manager	16.19
24570 - Child Care Attendant	11.62
24580 - Child Care Center Clerk	15.14
24610 - Chore Aide	12.54
24620 - Family Readiness And Support Services Coordinator	16.19
24630 - Homemaker	20.11
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	27.14
25040 - Sewage Plant Operator	22.42
25070 - Stationary Engineer	27.14
25190 - Ventilation Equipment Tender	19.25
25210 - Water Treatment Plant Operator	22.42
27000 - Protective Service Occupations	
27004 - Alarm Monitor	18.69
27007 - Baggage Inspector	13.34
27008 - Corrections Officer	21.67
27010 - Court Security Officer	23.28
27030 - Detection Dog Handler	16.89
27040 - Detention Officer	21.67
27070 - Firefighter	23.69
27101 - Guard I	13.34
27102 - Guard II	16.89
27131 - Police Officer I	25.73
27132 - Police Officer II	28.59
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	13.72
28042 - Carnival Equipment Repairer	14.59
28043 - Carnival Worker	10.92
28210 - Gate Attendant/Gate Tender	16.94
28310 - Lifeguard	17.42
28350 - Park Attendant (Aide)	18.95
28510 - Recreation Aide/Health Facility Attendant	14.51
28515 - Recreation Specialist	23.58
28630 - Sports Official	15.09
28690 - Swimming Pool Operator	18.85
29000 - Stevedoring/Longshoremen Occupational Services	

29010	- Blocker And Bracer	
29020	- Hatch Tender	
29030	- Line Handler	
29041	- Stevedore I	
29042	- Stevedore II	
30000	- Technical Occupations	
30010	- Air Traffic Control Specialist, Center (HFO)	(see 2) 37.72
30011	- Air Traffic Control Specialist, Station (HFO)	(see 2) 26.01
30012	- Air Traffic Control Specialist, Terminal (HFO)	(see 2) 28.63
30021	- Archeological Technician I	16.98
30022	- Archeological Technician II	19.43
30023	- Archeological Technician III	24.08
30030	- Cartographic Technician	24.08
30040	- Civil Engineering Technician	21.55
30051	- Cryogenic Technician I	21.70
30052	- Cryogenic Technician II	23.97
30061	- Drafter/CAD Operator I	16.86
30062	- Drafter/CAD Operator II	19.43
30063	- Drafter/CAD Operator III	21.67
30064	- Drafter/CAD Operator IV	26.66
30081	- Engineering Technician I	15.91
30082	- Engineering Technician II	18.64
30083	- Engineering Technician III	22.50
30084	- Engineering Technician IV	29.74
30085	- Engineering Technician V	32.60
30086	- Engineering Technician VI	39.41
30090	- Environmental Technician	22.21
30095	- Evidence Control Specialist	19.59
30210	- Laboratory Technician	23.01
30221	- Latent Fingerprint Technician I	21.70
30222	- Latent Fingerprint Technician II	23.97
30240	- Mathematical Technician	25.78
30361	- Paralegal/Legal Assistant I	18.66
30362	- Paralegal/Legal Assistant II	23.13
30363	- Paralegal/Legal Assistant III	28.30
30364	- Paralegal/Legal Assistant IV	34.23
30375	- Petroleum Supply Specialist	23.97
30390	- Photo-Optics Technician	25.78
30395	- Radiation Control Technician	23.97
30461	- Technical Writer I	22.86
30462	- Technical Writer II	27.96
30463	- Technical Writer III	33.84
30491	- Unexploded Ordnance (UXO) Technician I	23.97
30492	- Unexploded Ordnance (UXO) Technician II	29.00
30493	- Unexploded Ordnance (UXO) Technician III	34.76
30494	- Unexploded (UXO) Safety Escort	23.97
30495	- Unexploded (UXO) Sweep Personnel	23.97
30501	- Weather Forecaster I	26.66
30502	- Weather Forecaster II	32.42

30620 - Weather Observer, Combined Upper Air Or Surface Programs	(see 2)	21.67
30621 - Weather Observer, Senior	(see 2)	24.08
31000 - Transportation/Mobile Equipment Operation Occupations		
31010 - Airplane Pilot		29.00
31020 - Bus Aide		12.94
31030 - Bus Driver		18.43
31043 - Driver Courier		14.10
31260 - Parking and Lot Attendant		9.45
31290 - Shuttle Bus Driver		15.19
31310 - Taxi Driver		12.95
31361 - Truckdriver, Light		15.19
31362 - Truckdriver, Medium		17.26
31363 - Truckdriver, Heavy		20.10
31364 - Truckdriver, Tractor-Trailer		20.10
99000 - Miscellaneous Occupations		
99020 - Cabin Safety Specialist		14.14
99030 - Cashier		11.00
99050 - Desk Clerk		19.81
99095 - Embalmer		24.57
99130 - Flight Follower		23.97
99251 - Laboratory Animal Caretaker I		13.65
99252 - Laboratory Animal Caretaker II		19.44
99260 - Marketing Analyst		21.96
99310 - Mortician		24.57
99410 - Pest Controller		17.33
99510 - Photofinishing Worker		13.86
99710 - Recycling Laborer		21.11
99711 - Recycling Specialist		25.41
99730 - Refuse Collector		18.90
99810 - Sales Clerk		14.39
99820 - School Crossing Guard		15.82
99830 - Survey Party Chief		24.01
99831 - Surveying Aide		13.13
99832 - Surveying Technician		17.99
99840 - Vending Machine Attendant		13.90
99841 - Vending Machine Repairer		16.57
99842 - Vending Machine Repairer Helper		13.90

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors, applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their



own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is the victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

#### ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

**HEALTH & WELFARE:** \$1.78 per hour, or \$71.02 per week, or \$308.53 per month for all employees on whose behalf the contractor provides health care benefits pursuant to the Hawaii prepaid Health Care Act. For those employees not receiving mandated health care benefits mandated by the Hawaii prepaid Health Care Act, the new health and welfare amount will remain at \$4.27 per hour.

**VACATION:** 2 weeks paid vacation after 1 year of service with a contractor or successor, 3 weeks after 10 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (See 29 CFR 4.173)

**HOLIDAYS:** A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

#### THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) **COMPUTER EMPLOYEES:** Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- (4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employee (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

#### \*\* HAZARDOUS PAY DIFFERENTIAL \*\*

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

# \*\* UNIFORM ALLOWANCE \*\*

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

## \*\* SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS \*\*

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition (Revision 1), dated September 2015, unless otherwise indicated.

## \*\* REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE, Standard Form 1444 (SF-1444) \*\*

### Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested

parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract, a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order the proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the U.S. Department of Labor, Wage and Hour Division, for review (See 29 CFR 4.6(b)(2)(ii)).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour Division's decision to the contractor.
- 6) Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination (See 29 CFR 4.6(b)(2)(iii)).

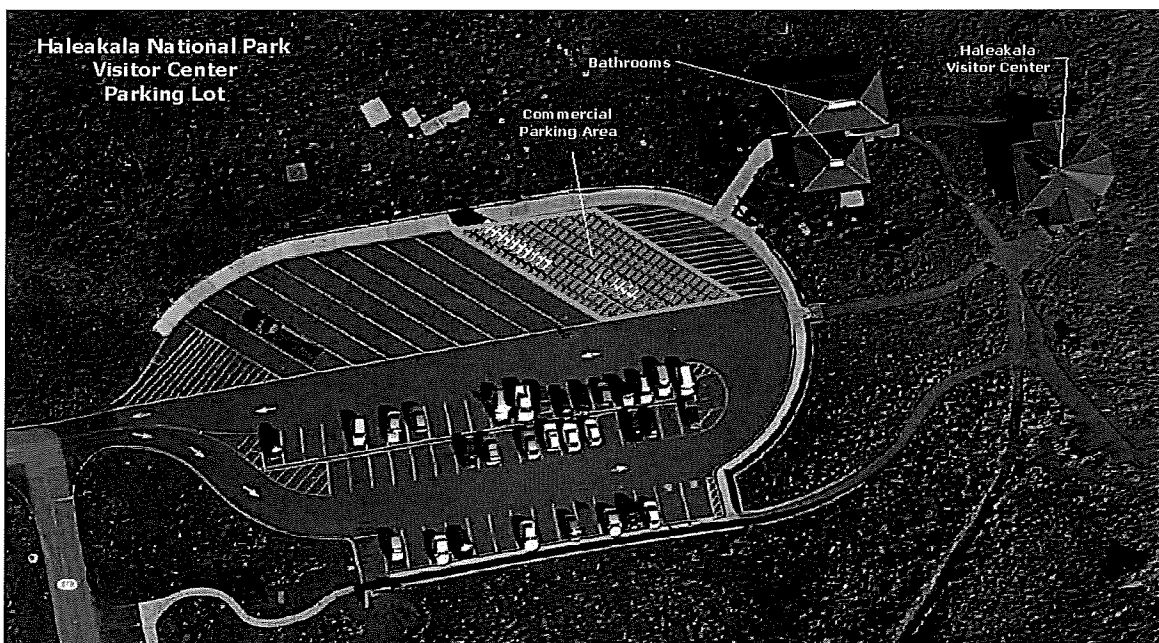
Information required by the Regulations must be submitted on SF-1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" should be used to compare job definitions to ensure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination (See 29 CFR 4.152(c)(1)).

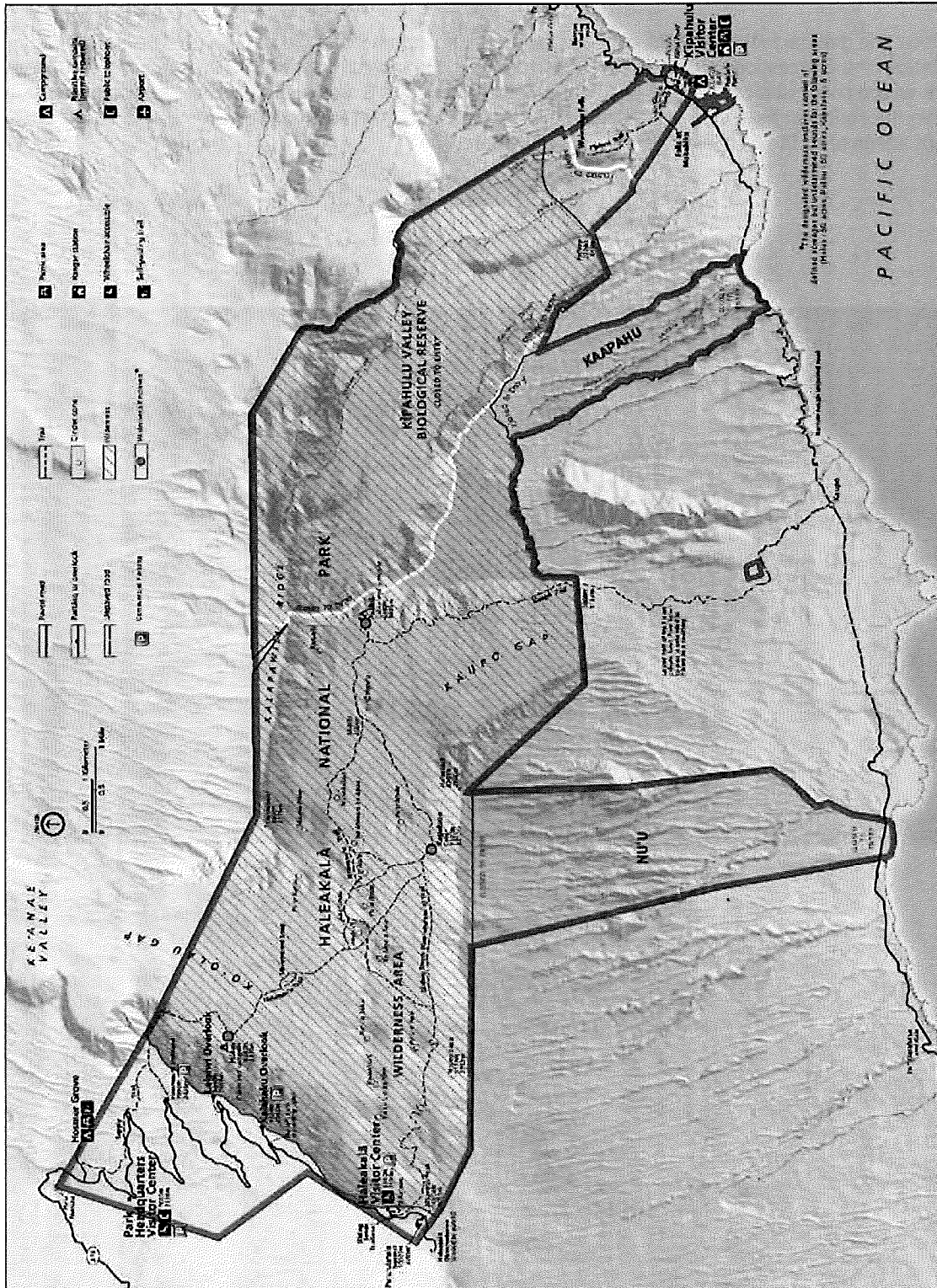
**EXHIBIT B-1****Parking Maps** (not drawn to scale)

Map A shows the general location of the concessioner-reserved commercial parking stalls at the Haleakalā Visitor Center. The Concessioner is assigned two of the eight commercial parking stalls. This is the only area in the Park where concessioner-assigned parking spaces will be. Map B shows the general location of other areas within the Park that have commercial parking areas which are available on a first come-first served basis and are not assigned to the Concessioner under the Contract.

MAP A



MAP B





**EXHIBIT D****INSURANCE REQUIREMENTS****SEC. 1. INSURANCE REQUIREMENTS**

The Concessioner shall obtain and maintain during the entire term of this Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the Contract. No act of the Concessioner, its agents, servants, or employees may impair any and all insurance coverage provided for the benefit of, or evidenced to the Service. The Concessioner must provide the Service with an unconditional 30-day advance notice of cancellation of coverage or policy terms on all liability and workers' compensation insurance policies.

The amounts of insurance, limits of liability, and coverage terms included are not intended as a limitation of the Concessioner's responsibility or liability under the Contract, but rather an indication as to the minimum types, amounts, and scope of insurance that the Service considers necessary to allow the operation of the concession at the Area. Nevertheless, if the Concessioner purchases insurance in addition to the limits set forth herein, the Service will receive the benefit of the additional amounts of insurance without cost to the Service.

**SEC. 2. LIABILITY INSURANCE**

The Concessioner must maintain the following minimum liability coverages, all of which, unless noted herein, are to be written on an occurrence form of coverage. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with excess or umbrella liability as explained below.

**(a) Commercial General Liability**

- (1) The Concessioner must obtain coverage for bodily injury, property damage, contractual liability, personal and advertising injury liability, and products and completed operations liability. The Concessioner must provide the following minimum limits of liability:

Per Occurrence	\$2,000,000
Personal and Advertising Injury Liability	\$2,000,000
General Aggregate	\$3,000,000
Products and Completed Operations Aggregate	\$3,000,000
Medical Payments	\$1,000

- (2) The liability coverages may not contain the following exclusions/limitations:

Athletic or Sports Participants  
Contractual Liability  
Personal and Advertising Injury exclusion or limitation  
Products and Completed Operations

**(b) Automobile Liability**

The Concessioner must provide coverage for bodily injury and property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. Use of Symbol 7, "specifically described autos," is acceptable when an insurer will not provide Symbol 1 because that insurer does not provide coverage for all of the Concessioner's owned "autos." Where there are no owned autos, the Concessioner will provide coverage for "hired autos" and "non-owned autos," Symbols 8 and 9. Garage-keepers' liability is to be included on a



"direct" basis for all Concessioner operations handling, parking or storing automobiles owned by others for a fee.

<b>Vehicle Description</b>	<b>Required Automobile Liability Combined Single Limit (Intrastate Transport)</b>
Concessioners with vehicles and no transport of passengers.	\$1,000,000
Concessioners with one public passenger vehicle (PPV), sport utility vehicle (SUV) or van with less than 8 passengers (including driver).	\$1,000,000
Concessioners with two or more PPVs, SUVs or vans with less than 8 passengers (including driver).	\$1,500,000
Concessioners with one PPV, SUV, van or bus with 8 to 15 passengers (including driver).	\$1,500,000
Concessioners with two or more PPVs, SUVs, vans or buses with 8 to 15 passengers (including driver).	\$1,500,000
Concessioners with bus with 16 or more passenger capacity (including driver). <sup>1</sup>	\$3,000,000

<sup>1</sup> Increase limit by \$1,000,000 for every 10 passenger increase over 30 passengers (e.g. 40 passengers would require \$4 million limit for intrastate transport, 50 passengers would require \$5,000,000 limit).

### **(c) Excess Liability or Umbrella Liability**

The Concessioner may use an Excess or Umbrella Liability policy to achieve the commercial general liability and automobile liability limits set forth above. The limit of liability under the excess policy must be in an amount that together with the subordinate policy meets the minimum limit of liability required.

The Concessioner is not required to provide excess liability or umbrella liability coverage, but may use it to supplement any insurance policies obtained to meet the minimum requirements of the Contract. If maintained, the Concessioner will provide coverage for bodily injury, property damage, personal injury, or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage must be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Umbrella Liability policy.

### **(d) Liquor Liability (not applicable)**

The Concessioner must provide coverage for bodily injury and property damage including damages for care, loss of services, or loss of support arising out of the selling, serving, or furnishing of any alcoholic beverage.

Each Common Cause Limit	\$
Aggregate Limit	\$

### **(e) Watercraft Liability (or Protection and Indemnity) (not applicable)**

The Concessioner must provide coverage for bodily injury and property damage arising out of the use of any watercraft.

Each Occurrence Limit \$

Tower's liability shall be maintained at the same each occurrence limit if the Concessioner tows or transports non-owned vessels by water.

**(f) Environmental Impairment Liability (or Pollution Liability) (not applicable)**

The Concessioner will provide coverage for bodily injury and property damage arising out of pollutants or contaminants on-site and off-site and for cleanup.

Each Occurrence or Each Claim Limit \$  
Aggregate Limit \$

**(g) Aircraft Liability (not applicable)**

The Concessioner must provide coverage for bodily injury (including passengers) and property damage arising out of the use of any aircraft.

Each Person Limit \$  
Property Damage Limit \$  
Each Accident Limit \$

The Concessioner must maintain airport liability insurance at a limit of at least \$ if the Concessioner maintains landing facilities for use by third parties. Hangerkeeper's liability shall be maintained at a limit sufficient to cover the maximum estimated value of non-owned aircraft in the Concessioner's care, custody or control if the Concessioner provides aircraft storage to third parties.

**(h) Professional Liability, e.g. dive instructor, massage therapist (not applicable)**

The Concessioner must maintain, or cause professionals working on its behalf to maintain, professional liability insurance for all professional services provided by or on behalf of the Concessioner.

Each Occurrence Limit \$  
Aggregate Limit \$

**(i) Deductibles/Self-Insured Retentions**

The Concessioner's self-insured retentions or deductibles on any of the above described liability Insurance policies (other than umbrella liability, environmental impairment liability or professional liability, if maintained) may not exceed \$5,000 without the prior written approval of the Director. Deductibles or retentions on umbrella liability, environmental impairment liability and professional liability may be up to \$25,000.

**(j) Workers' Compensation and Employers' Liability**

The Concessioner must obtain coverage that complies with the statutory requirements of the state(s) in which the Concessioner operates. The employer's liability limit will not be less than \$1,000,000.

If the Concessioner's operations include use of watercraft on navigable waters and employ persons in applicable positions, a Maritime Coverage Endorsement must be added to the Workers' Compensation policy, unless coverage for captain and crew is provided in a Protection and Indemnity policy.

If Concessioner operations are conducted in proximity to navigable waters and employ persons in applicable positions, United States Longshore and Harbor Workers' Compensation Act coverage must be endorsed onto the Workers' Compensation policy.

**SEC. 3. INSURANCE COMPANY MINIMUM STANDARDS**

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

- (1) All insurers for all coverages must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.
- (2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.

**SEC. 4. THIRD PARTY INSURANCE**

Concessioners entering into contracts with third parties for various services or activities that the Concessioner is not capable of providing or conducting, must ensure that each third party retained for such work maintain an insurance program that adequately covers the activity and comply with all the requirements applicable to that party's own insurance.

**SEC. 5. CERTIFICATES OF INSURANCE**

All certificates of insurance required by this Contract shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address, and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the Concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (and all endorsements thereto) required herein to be maintained by the Contract including this Exhibit.

The certificate of insurance shall contain a notation by the Concessioner's insurance representative that the insurance coverage represented therein complies with the provisions of the Contract, including this Exhibit.

**SEC. 6. STATUTORY LIMITS**

In the event that a statutorily required limit exceeds a limit required herein, the Concessioner must maintain the higher statutorily required limit, which shall be considered as the minimum to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein apply.

## **EXHIBIT E TRANSITION TO A NEW CONCESSIONER**

### **SEC 1. GENERAL**

The Director and the Concessioner hereby agree that, in the event of the expiration or termination of this Contract for any reason (hereinafter "Termination" for purposes of this Exhibit) and the Concessioner is not to continue the operations authorized under this Contract after the Termination Date, the Director and the Concessioner in good faith will fully cooperate with one another and with the new concessioner or concessioners selected by the Director to continue such operations ("New Concessioner" for purposes of this exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to Area visitors and minimize transition expenses.

### **SEC. 2. COOPERATION PRIOR TO THE TERMINATION DATE**

At such time as the Director may notify the Concessioner that it will not continue its operations upon the Termination of this Contract, the Concessioner, notwithstanding such notification, shall undertake the following tasks.

#### **(a) Continue Operations**

The Concessioner shall continue to provide visitor services and otherwise comply with the terms of the Contract in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously with a view to maintaining customer satisfaction.

#### **(b) Continue Bookings**

(1) The Concessioner shall continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken. The Concessioner shall not divert any bookings to other facilities managed or owned by the Concessioner or any affiliate of the Concessioner. The Concessioner shall notify all guests with bookings for any period after the Termination Date that the New Concessioner will operate the facilities and services.

(2) Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner. The Concessioner thereafter shall update such log on a periodic basis (but no less frequently than 30 days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's address, contact information, dates of stay, rate quoted, amount of advance deposit received, and confirmation number, if applicable.

#### **(c) Designating a Point of Contact and Other Actions**

(1) The Concessioner shall designate one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner.

(2) The Concessioner shall provide the New Concessioner with access to all Concession Facilities, including "back-of-house areas". The Concessioner also shall provide the New Concessioner copies of the keys to all Concession Facilities.

(3) The Concessioner shall provide the Director and the New Concessioner full access to the books and records, licenses, and all other materials pertaining to all Concession Facilities and the Concessioner's operations in general.

(4) The Concessioner shall provide the Director and the New Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio), service contracts, and supply contracts, including

contracts for on-order merchandise (collectively "contracts"), and copies of all liquor licenses and other licenses and permits (collectively "licenses").

(5) The Concessioner shall allow the New Concessioner to solicit and interview for employment all of the concessioner's salaried and hourly employees, including seasonal employees, through a coordinated process implemented by the Concessioner.

(6) The Concessioner shall not enter into any contracts or agreements that would be binding on any Concession Facilities or concession operations in general after the Termination Date without the prior written agreement of the New Concessioner.

**(d) Financial Reports**

Within 30 days after receipt of the notification of the selection of the New Concessioner, The Concessioner shall provide the New Concessioner with a financial report with respect to the operation of the Concession Facilities and the Concessioner's operations in general as of the last day of the month prior to receipt of such notification. The Concessioner, thereafter, shall update such financial report on a periodic basis (but no less frequently than 30 days) until the Termination Date. Such financial report shall include, at a minimum: a balance sheet for the Concession Facilities, if any; a schedule of pending accounts payable; and a schedule of pending accounts receivable.

**(e) Personal Property List**

The Concessioner shall provide the New Concessioner with a complete, detailed, and well-organized list of physical inventory, supplies, and other personal property owned or leased by the Concessioner in connection with its operations under the Contract (including a list of such items that are on order) The Concessioner must provide the list to the New Concessioner within 30 days following receipt of the notification of the selection of the New Concessioner. The Concessioner, thereafter, shall update the list on a monthly basis. The Concessioner shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of the concession operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

**(f) Other Information and Reports**

The Concessioner shall provide the New Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner's operations for the period of one year prior to notification of the selection of the New Concessioner. The Concessioner must also provide complete information on the following to the New Concessioner: utilities, including gas and electric; telephone service; water service; and specific opening and closing procedures. The Concessioner must provide all such information within 30 days after receipt of notification of the selection of the New Concessioner and update the information periodically (but no less frequently than 30 days) until the Termination Date.

**(g) Other Cooperation**

The Concessioner shall provide the Director and the New Concessioner with such other cooperation as reasonably may be requested.

**SEC. 3. COOPERATION UPON THE TERMINATION DATE**

Upon the Termination Date, the Concessioner shall undertake the following activities.

**(a) Transfer of Contracts and Licenses**

The Concessioner shall cooperate with the transfer or assignment of all contracts and licenses entered into by the Concessioner that the New Concessioner elects to assume.

**(b) Reservation Systems**

The Concessioner shall cooperate with the transfer of reservation information by:

- (i) Providing the New Concessioner with an update of the reservation log through the Termination Date;
- (ii) Disconnecting its operations from the Concessioner's centralized reservation system, if any; and
- (iii) Assisting the New Concessioner in transitioning to the New Concessioner's reservation system.

**(c) Fees and Payments**

No later than 10 days after the Termination Date, the Concessioner shall provide the Director with an itemized statement of all fees and payments due to the Director under the terms of the Contract as of the Termination Date, including, without limitation, all deferred, accrued, and unpaid fees and charges. The Concessioner, within 10 days of its delivery to the Director of this itemized statement, shall pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of information that was not available at the time of the statement.

**(d) Access to Records**

The Concessioner shall make available to the Director for the Director's collection, retention, and use, copies of all books, records, licenses, permits, and other information in the Concessioner's possession or control that in the opinion of the Director are related to or necessary for orderly and continued operations of the related facilities and services, notwithstanding any other provision of this Contract to the contrary.

**(e) Removal of Marks**

The Concessioner shall remove (with no compensation to Concessioner) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessioner within 30 days after Termination.

**(f) Other Cooperation**

The Concessioner shall provide the Director and the New Concessioner with such other cooperation as reasonably may be requested.

**EXHIBIT F**  
**INTELLECTUAL PROPERTY LICENSED MARKS**

Haleakalā National Park

